

APPROVED MINUTES

KITTERY TOWN COUNCIL

March 9, 2015

COUNCIL CHAMBERS

1. Call to Order

Chairperson Thomson called the meeting to order at 7:00 P.M.

2. Introductory

Chairperson Thomson read the introductory.

3. Pledge of Allegiance

Chairperson Thomson led those present in the Pledge of Allegiance.

4. Roll Call

Answering the roll were Chairperson Jeffrey Thomson, Councilors Russell White, Frank Dennett, Chuck Denault, Jeffrey Pelletier, Judy Spiller and Ken Lemont.

5. Agenda Amendment and Adoption –

The agenda was accepted as presented.

6. Town Manager's Report –

Town Manager Puff stated the insurance claims to date for the flooding at the KCC were \$65,000.00. She continued they were still looking at the best long-term fix for the system.

Town Manager Puff indicated a representative from the Shipyard would be at the next Council meeting to discuss traffic issues.

Town Manager Puff noted they had held the second meeting on the Athletic Fields master plan the previous week and that meeting would be rebroadcasted several times on Channel 22.

Town Manager Puff indicated relative to the Foreside Forum Report, that they were working to develop an RFP for consulting services in developing the final report. She continued she thought this would go into the next fiscal year.

Town Manager Puff stated the Public Works snow removal costs were over by \$76,000. She continued she would have a recommendation in the near future as to how they would cover that expense.

Town Manager Puff noted relative to the proposed school budget, that it was at a 3.82% increase for expenses and a 2.26% increase in tax appropriation.

APPROVED MINUTES

Town Manager Puff stated she was looking at putting together a small committee to look at the future of the Rice Library.

Town Manager Puff indicated that sensitivity training was scheduled for March 19th at 6 pm and that she had sent out a notice to all of the Chairs.

Town Manager Puff noted they had asked ME DOT to look discontinuing the light at the beginning of the Sarah Long Bridge as the two lights so close together were causing confusion.

Town Manager Puff stated she had spoken with the Kittery Land Trust who indicated they were thinking they would not be making a bond request until fall.

Town Manager Puff indicated they had made good progress with ME DOT wanting to give back maintenance on the bypass and other areas in the urban compact area. She continued that those areas did not appear to meet the conditions of the urban compact area.

Town Manager Puff stated that she would be bringing forward a Charter amendment on how public hearings needed to be advertised.

Councilor Lemont conveyed questions for the Town Manager to ask the School Board relative to the budget. Town Manager Puff noted that the School Board would be presenting their budget on April 6th. Councilor Pelletier stated he thought it might be more beneficial to discuss Council's issues with the budget before that presentation. Chairperson Thomson noted that Council had requested that they come back with an increase of 1.7%. Councilor Lemont indicated that he would like to get a clearer picture of the overall budget. Councilor Spiller agreed that some discussion needed to be had before April 6th. Chairperson Thomson stated he would work with the Manager to set up a time to meet before April 6th.

7. Acceptance of Previous Minutes –1/28/15, 2/23/15 Special Meeting and 2/23/15 Regular Meeting.

The minutes of 1/28/15, 2/23/15 Special Meeting and 2/23/15 Regular Meeting were accepted as amended.

8. Interviews for the Board of Appeals and Planning Board – None

9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials –

(030115-1) The Kittery Town Council moves to hold a hearing in accordance with 17 MRS Sec. 2851, to determine if the structure commonly referred to as the former Mary's Store, located on the lot or parcel of land at or about 40 Old Post Road in Kittery, Map 8, Lot 25, is a dangerous building and if so, what action, if any, the Town Council orders to be taken to address such dangerous conditions of said structure.

APPROVED MINUTES

Chairperson Thomson noted that this hearing was advertised in the Portsmouth Herald on February 4th, February 11th and February 18th.

Attorney McEachern stated that he would be able to advise the Council with any questions that they might have and that he was prepared to draft an Order after the hearing if they so wished. Councilor Dennett indicated that he owned part of a business that does business with the property owner in question. He continued he did not think it created a conflict of interest but that he was recusing himself to avoid any problems. Attorney McEachern noted that Council needed to determine if the building in question was unsuitable or improper for the use of which it was put or if it constitutes a hazard to the health or safety because of inadequate maintenance or abandonment or is otherwise dangerous.

Attorney Bill Dale came to the podium and stated he would be presenting the case for the town. He asked the Fire Chief, the Police Chief and Code Enforcement Officer and anyone else who wished to testify come forward and be sworn in. Mr. Dale asked Chief O'Brien to come forward and testify and asked Chief O'Brien if he was familiar with the property. Chief O'Brien stated that he did and that he had examined the building very carefully as there was a bus fire behind the building the previous summer. Attorney Dale asked what he determined about the building. Chief O'Brien responded that the building was in very poor shape and that some of the floor had collapsed into the basement. He continued that he was concerned about the safety of the property as it was next to Legion Pond which was used frequently by kids. Attorney Dale asked what risk it would pose to the Department if some kids were to break into the building. Chief O'Brien stated that it would cause quite a risk and would put firefighters in a hazardous situation if they needed to rescue someone from that building. Attorney Dale asked if any he had seen any indication that the building had been repaired since the fire over the summer. Chief O'Brien stated that he had gone back out to the property on March 3rd and no repairs had been made. Attorney Dale asked if it would be reasonably feasible to make the building structurally sound given the condition it was in. Chief O'Brien responded that he did not think so. James Dineen, owner of the property, asked Chief O'Brien if he had approached him since the time of the fire to address his concerns. Chief O'Brien responded that he had not. Mr. Dineen asked if there was any part of the exterior of the building that was falling apart. Chief O'Brien stated that the front end of the building was beginning to collapse. Mr. Dineen asked if the town had hired a structural engineer to get an opinion on the building. Chief O'Brien noted they had not. Mr. Dineen asked if he had seen any openings which a trespasser could enter the building. Chief O'Brien responded that he had not and that the building had been locked when he checked over the summer. Councilor Denault asked if someone could break a window to gain access to the building. Chief O'Brien stated that they could. Chairperson Thomson asked if there was another fire on the property if the building would go up quickly due to the condition. Chief O'Brien stated that it would. Mr. Dineen asked Chief O'Brien if he was aware of any occurrence where

APPROVED MINUTES

someone had broken into the building. Chief O'Brien responded that he was not aware of any occurrence.

Attorney Dale asked Police Chief Short to testify and asked if he thought the building was unsafe. Chief Short stated that he had been having ongoing conversations with Chief O'Brien and he agreed with his opinion that the building was unsafe. Attorney Dale asked if he would feel comfortable sending his officers into the building. Chief Short responded that he would not. Mr. Dineen asked Chief Short if anyone had been called to the building to remove someone since he had started working for the town. Chief Short noted that he did not have any personal knowledge of that.

Attorney Dale asked CEO Marchi to testify and asked if he thought the building constituted a safety hazard. Mr. Marchi responded that he thought the building was structurally unsafe. Mr. Dineen asked Mr. Marchi about his experience and schooling. Councilor Denault asked Mr. Marchi if any current training that he was doing would help to make his decision as to what he had testified to that evening. Mr. Marchi stated that it had and that his previous experience would lead him to believe that there could be a sewer issue on the premises. Councilor Pelletier asked if he was aware of any current sewer problems. Mr. Marchi stated he was not aware of any current issues.

Attorney Dale asked Town Clerk Place to testify. Attorney Dale asked if she was familiar with the process of advertising a hearing in the newspaper. Ms. Place responded that she was and that she had submitted legal notices that were published on February 4th, February 11th and February 18th. Mr. Dineen asked Ms. Place if she had made any other attempts to contact interested parties. Ms. Place responded that she had not.

Attorney Dale asked Mr. Dineen to testify and asked if he was the current owner of the property and how he had acquired it. Mr. Dineen stated he was the owner and had acquired the property by virtue of a deed. Attorney Dale asked if the deed had been recorded in the York County Registry of Deeds. Mr. Dineen responded that it had not. Attorney Dale asked if he was aware that the York County Sheriff had attempted to serve him with notice of this proceeding. Mr. Dineen responded that he was not aware. Attorney Dale asked how he knew that he needed to be there that evening. Mr. Dineen responded that he had seen it in the newspaper. Attorney Dale asked if Mr. Dineen had received a handwritten piece of mail from his office with notice of the hearing in the mail. Mr. Dineen responded that he had but that it was not an official document because it was not signed. Councilor Denault asked if the building had power. Mr. Dineen responded that it had not had power for about ten years. Councilor Denault asked if the oil tank had been drained. Mr. Dineen stated that it had. Councilor Denault asked if he thought the building was unsafe. Mr. Dineen responded that the interior was but that the building was secured. Councilor Denault asked if someone could break into the building. Mr. Dineen stated that they could but it had not happened since he had possession of the building in 1992.

APPROVED MINUTES

Councilor Pelletier asked if the building was being used. Mr. Dineen responded that it was being used for storage and that he was the only person who currently had access to the building. He continued there were six bus tires being stored as well as some old office equipment. Councilor Pelletier asked Mr. Dineen why he was opposed to tearing down the building if he agreed that it was unsafe. Mr. Dineen responded he would be happy to have the building razed if the town wanted to pay for it. Councilor Thomson asked if he knew why the floor had collapsed. Mr. Dineen stated that he did not. Councilor White asked when the last maintenance was done on the building. Mr. Dineen responded that it had been a long time. Councilor White asked why the deed was never recorded. Mr. Dineen said it was for personal reasons. Attorney Dale asked Chief O'Brien what his professional opinion was relative to the fire hazard being posed from the storage of the tires in the building. Chief O'Brien responded that the tires would create intense heat and black smoke and increased the fire danger.

David Lincoln came to the podium and stated that he saw three problems with the building; that it created an attractive nuisance, created a potential environmental hazard and presented a negative impression of Kittery because it was unsafe and unsightly. He continued that he thought Council had an opportunity to set a precedent for derelict buildings in town.

Mr. Dineen called himself as a witness. He stated that his participation that evening should not be considered a waiver of notice requirements by statute and that he was never served. He continued that he did not think that the case had been made to determine the building as dangerous. Mr. Dineen stated the building is, and always has been, locked and that no one had made an attempt to break into the building in the 23 years that he had owned it. Councilor Pelletier asked if Mr. Dineen was unable or unwilling to have the building razed. Mr. Dineen responded that he was unwilling to pay for it.

Attorney Dale noted that he thought the town had made its case that the building was unsafe, hazardous, unstable, unsanitary and constituted a fire hazard and a hazard to public safety. He continued that the building needed to be razed and did not see why the taxpayers should have to pay for it. Attorney Dale stated that it should be taken down at Mr. Dineen's expense and that they could put a lien on the property to recoup the costs of taking the building down. Mr. Dineen stated that he could remove the tires from the building if it was such an issue. He continued that the building was secure at all times and asked Council to dismiss the matter.

Attorney McEachern noted that Council now needed to determine if the evidence they heard that evening would constitute that the building be deemed dangerous according to the statute.

CHAIRPERSON THOMSON MOVED THAT THE KITTERY TOWN COUNCIL, AFTER DUE HEARING ON MARCH 9, 2015, HAS FOUND THAT THE PROPERTY LOCATED AT 40 OLD POST ROAD, MAP 8, LOT 25 HAS MET THE CONDITIONS

APPROVED MINUTES

UNDER MAINE STATE STATUTE 2851 TO DETERMINE THE BUILDING AS DANGEROUS, UNSANITARY, A FIRE HAZARD, UNSUITABLE FOR THE OCCUPANCY AS WHICH IT IS PUT, A HAZARD TO HEALTH AND SAFETY AND STRUCTURALLY UNSAFE, SECONDED BY COUNCILOR DENAULT.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0. (Councilor Dennett was recused)

COUNCILOR DENAULT MOVED TO PROCEED WITH AN ORDER TO BE DRAFTED BY ATTORNEY MCEACHERN, SECONDED BY COUNCILOR PELLETIER.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 6/0. (Councilor Dennett was recused)

10. PUBLIC HEARINGS - None

11. Discussion

a. Discussion by members of the public –

Diane Sylvester came to the podium and stated that Mr. Dineen had been in business in the town since 1973. She continued that people had done nothing but harass him and thought that Council should be ashamed of themselves.

Chief O'Brien came to the podium and indicated that one of his firefighters, Dan Hale, had been published in the Fire Engineering magazine. He continued the article was addressing tunnel vision in stressful situations.

George Dow came to the podium and stated that he did not think it was fair for Council to be criticizing the school budget before they had discussions on the matter. He continued he thought it was irresponsible and unfair.

Holly Zerr came to the podium and thanked Council for taking action on the 40 Post Road property.

12. UNFINISHED BUSINESS – None

13. NEW BUSINESS

a. Donations/gifts received for Council disposition - None

b. (030115-1) The Kittery Town Council moves to approve the disbursement warrants.

APPROVED MINUTES

CHAIRPERSON THOMSON MOVED TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR PELLETIER, WITH ALL IN FAVOR. MOTION PASSES 7/0.

c. (030115-2) The Kittery Town Council moves to approve the five town-wide Sidewalk Sales Events for 2015 as requested by the Kittery Outlet Association: May 22-25; July 2-5; July 30- August 2; September 4-7; and October 9-12.

COUNCILOR SPILLER MOVED TO APPROVE THE FIVE TOWN-WIDE SIDEWALK SALES EVENT FOR 2015 AS REQUESTED BY THE KITTERY OUTLET ASSOCIATION: MAY 22-25; JULY 2-5; JULY 30 – AUGUST 2, SEPTEMBER 4-7; AND OCTOBER 9-12, SECONDED BY COUNCILOR PELLETIER.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

d. (030115-3) The Kittery Town Council moves to authorize the Tributary Brewing Co., LLC, 5 Winding Brooke Lane, South Berwick, ME for a one day extension for Tributary Brewing Company, 10 Shapleigh Road, Site A, to hold a one day event on April 1, 2015 from noon to 9:00 P.M. to serve beer under an enclosed tent in front of the establishment.

COUNCILOR SPILLER MOVED TO AUTHORIZE THE TRIBUTARY BREWING CO., LLC, 5 WINDING BROOKE LANE, SOUTH BERWICK, ME FOR A ONE DAY EXTENSION FOR TRIBUTARY BREWING COMPANY, 10 SHAPLEIGH ROAD, SITE A, TO HOLD A ONE DAY EVENT ON APRIL 1, 2015 FROM NOON TO 9:00 P.M. TO SERVE BEER UNDER AN ENCLOSED TENT IN FRONT OF THE ESTABLISHMENT, SECONDED BY COUNCILOR PELLETIER.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

e. (030115-4) The Kittery Town Council moves to approve a renewal application from The Dance Hall, 7 Walker Street, Kittery for a Malt and Vinous Liquor License for The Dance Hall, 7 Walker Street.

COUNCILOR SPILLER MOVED TO APPROVE A RENEWAL APPLICATION FROM THE DANCE HALL, 7 WALKER STREET, KITTERY FOR A MALT AND VINOUS LIQUOR LICENSE FOR THE DANCE HALL, 7 WALKER STREET, SECONDED BY COUNCILOR WHITE.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

APPROVED MINUTES

f. (030115-5) The Kittery Town Council moves to authorize the release of funds in the amount of \$10,000 from unassigned surplus and to appropriate said funds to be paid out of account #101740-68427 Expense Self-Insurance Claims to pay the deductible associated with the water damage claim # 2 at the Kittery Community Center.

COUNCILOR PELLETIER MOVED TO AUTHORIZE THE RELEASE OF FUNDS IN THE AMOUNT OF \$10,000 FROM UNASSIGNED SURPLUS AND TO APPROPRIATE SAID FUNDS TO BE PAID OUT OF ACCOUNT #101740-68427 EXPENSE SELF-INSURANCE CLAIMS TO PAY THE DEDUCTIBLE ASSOCIATED WITH THE WATER DAMAGE CLAIM #2 AT THE KITTEY COMMUNITY CENTER, SECONDED BY COUNCILOR WHITE.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

14. COUNCILOR ISSUE OR COMMENT

Councilor Spiller noted she thought they were supposed to receive a report on appointments that evening. She continued she thought they should put the appointments that had been postponed back on the agenda and move ahead. Councilor White stated there had been a few issues with the report and that it was not able to be submitted in time to make it into Council's packet.

Councilor White asked if the DPW was still working on clearing the sidewalks and asked how the snow removal estimates were done. Town Manager Puff responded that the sidewalks were still being worked on and they used figures from previous years to come up with an average.

Councilor Denault stated that he had received a lot of complaints about tractor trailers going down Route 103 so that they could bypass the weigh station on Route 1.

Councilor Denault noted he was looking for the town's oldest resident to receive the Boston Cane award. He continued he thought they might want to look into having a citizen of the year award.

Councilor Denault indicated he had received complaints about the hours of the Town Hall. He asked that this issue be put on an agenda so Council could explore their options.

Councilor Denault stated he had met with the Shipyard Commander and they were looking for previous scouts to attend a Boy Scout meeting for an alumni night.

15. COMMITTEE AND OTHER REPORTS

a. Communications from the Chairperson

APPROVED MINUTES

Chairperson Thomson thanked the Kittery Water District for their work on digging the fire hydrants out during the winter.

Chairperson Thomson noted that would have a workshop with the CIP Committee at 6:15 P.M. on March 23rd.

b. Committee Reports – None

16. EXECUTIVE SESSION – None

17. ADJOURNMENT

COUNCILOR WHITE MOVED TO ADJOURN, SECONDED BY COUNCILOR DENAULT WITH ALL IN FAVOR. MEETING ADJOURNED AT 9:32 P.M.